

**Letter of Findings: 02-20140519
Corporate Income Tax
For Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

Company was responsible for additional income tax because its documentation failed to substantiate that it properly apportioned its income for Indiana income tax purposes.

ISSUE

I. Corporate Income Tax - Apportionment Percentage.

Authority: I.R.C. § 63; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3.1-4-1; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Sherwin-Williams Co. v. Indiana Dep't of State Revenue, 673 N.E.2d 849 (Ind. Tax Ct. 1996); IT-20 Corporate Indiana Income Tax Booklet Year 2011 and Fiscal Years Ending in 2012 (August 2011).

Taxpayer claimed that the Indiana Department of Revenue erred in adjusting its apportioned income for Indiana corporate income tax purposes.

STATEMENT OF FACTS

Taxpayer is an out-of-state company doing business in Indiana. Taxpayer filed its 2011 Indiana corporate income tax return, IT-20. The Indiana Department of Revenue ("Department") reviewed Taxpayer's return and determined that Taxpayer made an error in calculating its apportioned Indiana income (Lines 16a through 16d, and 17 of the return). As a result, the Department issued a proposed assessment, including interest and penalty.

Taxpayer protested the assessment. A phone hearing was conducted. This Letter of Findings ensued. Additional facts will be provided as necessary.

I. Corporate Income Tax - Apportionment Percentage.

DISCUSSION

The Department reviewed Taxpayer's 2011 return and determined that Taxpayer made a calculation error in its return, which resulted in a deficiency of its Indiana income tax. Taxpayer disagreed.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 587 (Ind. 2014) (citing UACC Midwest, Inc. v. Indiana Dep't of State Rev. 629 N.E.2d 1295, 1299 (Ind. Tax Ct. 1994)). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by

another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

For income tax purposes, Indiana follows the federal tax scheme with certain modifications. IC § 6-3-2-1(b); IC § 6-3-1-3.5(b). Additionally, "Indiana imposes a tax on every corporation's adjusted gross income derived from sources within Indiana. [IC § 6-3-2-1(b).] In cases where a corporation derives business income from sources both within and without Indiana, the 'adjusted gross income derived from sources within the state of Indiana' is determined by an apportionment formula." *Sherwin-Williams Co. v. Indiana Dep't of State Revenue*, 673 N.E.2d 849, 851 (Ind. Tax Ct. 1996). For all taxable years beginning after December 31, 2010, that formula operates by multiplying taxpayer's total business income by a fraction composed of the sales factor. IC § 6-3-2-2(b)(5).

The Department's IT-20 Corporate Indiana Income Tax Booklet Year 2011 and Fiscal Years Ending in 2012 (August 2011) ("IT-20 Corporate Income Tax Booklet"), available at <http://www.in.gov/dor/4570.htm> (last visited November 16, 2015), further provided, in relevant part:

Apportionment of Income for an Entity with Multistate Activities

Lines 16a through 16d - Apportionment Method Applied

If applicable, enter the Indiana apportionment percent from the completed schedule. **(Round to two decimal places, for example, 98.46[percent])** Check box 16a if using IT-20 Schedule E, Line 8. Check box 16b if using Schedule E-7, Apportionment for Interstate Transportation. . . . Check box 16c if using another approved method. (You must enclose the appropriate schedule.) . . .

(Emphasis added).

Throughout the protest process, Taxpayer argued that its calculation of its apportionment percentage was correct because the statute is silent as to "rounding the apportionment percentage" under IC § 6-3-2-2(e). Thus, Taxpayer maintained under IC § 6-3-2-2(e), it was not required to follow the Department's instruction in "rounding the apportionment percentage." Specifically, in its protest letter, Taxpayer stated, in relevant part:

The [Department] rounded the apportionment percentage on Line 16d to 2 decimal places. When [Taxpayer] Line 17 was calculated, the apportionment percentage was not rounded. It is shown as rounded on the tax return because of space. In a review of Indiana statutes regarding the apportionment of income, no mention is made of rounding the apportionment percentage. . . .

Normally, rounding would not yield a significant difference in tax but in the case of [Taxpayer] it is \$1,265 difference. . . .

According to Taxpayer, the percentage it used was 0.019057. Taxpayer simply relied on the fact that IC § 6-3-2-2(e) is silent concerning "rounding the apportionment percentage"; it did not provide any reference including statutes, regulations, or case law, to support its position of using "0.019057."

Upon review, however, Taxpayer's reliance on IC § 6-3-2-2(e) is misplaced. Specifically, the Department is the agency charged with enforcing the tax statutes. As mentioned earlier, when an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583. The Department, in this instance, in its IT-20 Corporate Income Tax Booklet clearly provided a reasonable way of calculating the apportionment percentage when a taxpayer had "Multistate Activities." The Department's interpretation is entitled to deference.

Even if assuming that Taxpayer was not required to follow the instruction in "rounding the apportionment percentage," Taxpayer checked Line 16a and entered "1.91 [percent]" in Line 16d on its IT-20 return as filed in 2012. Taxpayer's return showed that it had elected to file its 2011 Indiana corporate income tax return using the standard apportionment formula and the apportionment percentage as stated was "1.91 [percent]." The Department is unable to agree that Taxpayer used "0.019057" as its apportionment percentage. The Department properly adjusted Taxpayer's Indiana apportioned business income (Line 17) based on the stated "1.91 [percent]" on Line 16d. Given the totality of the circumstances, in the absence of other supporting documentation, the Department followed the "1.91 [percent]" stated in Line 16d, and then subsequently made an adjustment in Line 17 to arrive at the correct number.

FINDING

Taxpayer's protest is respectfully denied.

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